

By: Representative Fleming

To: Judiciary En Banc

HOUSE BILL NO. 136

1 AN ACT TO AMEND SECTION 99-19-101, MISSISSIPPI CODE OF 1972,  
2 TO PROVIDE THAT A DEFENDANT'S MENTAL RETARDATION IS A MITIGATING  
3 FACTOR IN DEATH PENALTY CASES; AND FOR RELATED PURPOSES.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

5 **SECTION 1.** Section 99-19-101, Mississippi Code of 1972, is  
6 amended as follows:

7 99-19-101. (1) Upon conviction or adjudication of guilt of  
8 a defendant of capital murder or other capital offense, the court  
9 shall conduct a separate sentencing proceeding to determine  
10 whether the defendant should be sentenced to death, life  
11 imprisonment without eligibility for parole, or life imprisonment.  
12 The proceeding shall be conducted by the trial judge before the  
13 trial jury as soon as practicable. If, through impossibility or  
14 inability, the trial jury is unable to reconvene for a hearing on  
15 the issue of penalty, having determined the guilt of the accused,  
16 the trial judge may summon a jury to determine the issue of the  
17 imposition of the penalty. If the trial jury has been waived, or  
18 if the defendant pleaded guilty, the sentencing proceeding shall  
19 be conducted before a jury impaneled for that purpose or may be  
20 conducted before the trial judge sitting without a jury if both  
21 the State of Mississippi and the defendant agree thereto in  
22 writing. In the proceeding, evidence may be presented as to any  
23 matter that the court deems relevant to sentence, and shall  
24 include matters relating to any of the aggravating or mitigating  
25 circumstances. However, this subsection shall not be construed to  
26 authorize the introduction of any evidence secured in violation of  
27 the Constitution of the United States or of the State of

28 Mississippi. The state and the defendant and/or his counsel shall  
29 be permitted to present arguments for or against the sentence of  
30 death.

31 (2) After hearing all the evidence, the jury shall  
32 deliberate on the following matters:

33 (a) Whether sufficient factors exist as enumerated in  
34 subsection (7) of this section;

35 (b) Whether sufficient aggravating circumstances exist  
36 as enumerated in subsection (5) of this section;

37 (c) Whether sufficient mitigating circumstances exist  
38 as enumerated in subsection (6) of this section, which outweigh  
39 the aggravating circumstances found to exist; and

40 (d) Based on these considerations, whether the  
41 defendant should be sentenced to life imprisonment, life  
42 imprisonment without eligibility for parole, or death.

43 (3) For the jury to impose a sentence of death, it must  
44 unanimously find in writing the following:

45 (a) That sufficient factors exist as enumerated in  
46 subsection (7) of this section;

47 (b) That sufficient aggravating circumstances exist as  
48 enumerated in subsection (5) of this section; and

49 (c) That there are insufficient mitigating  
50 circumstances, as enumerated in subsection (6), to outweigh the  
51 aggravating circumstances.

52 In each case in which the jury imposes the death sentence,  
53 the determination of the jury shall be supported by specific  
54 written findings of fact based upon the circumstances in  
55 subsections (5) and (6) of this section and upon the records of  
56 the trial and the sentencing proceedings. If, after the trial of  
57 the penalty phase, the jury does not make the findings requiring  
58 the death sentence or life imprisonment without eligibility for  
59 parole, or is unable to reach a decision, the court shall impose a  
60 sentence of life imprisonment.

61           (4) The judgment of conviction and sentence of death shall  
62 be subject to automatic review by the Supreme Court of Mississippi  
63 within sixty (60) days after certification by the sentencing court  
64 of entire record, unless the time is extended for an additional  
65 period by the Supreme Court for good cause shown. Such review by  
66 the Supreme Court shall have priority over all other cases and  
67 shall be heard in accordance with rules promulgated by the Supreme  
68 Court.

69           (5) Aggravating circumstances shall be limited to the  
70 following:

71                 (a) The capital offense was committed by a person under  
72 sentence of imprisonment.

73                 (b) The defendant was previously convicted of another  
74 capital offense or of a felony involving the use or threat of  
75 violence to the person.

76                 (c) The defendant knowingly created a great risk of  
77 death to many persons.

78                 (d) The capital offense was committed while the  
79 defendant was engaged, or was an accomplice, in the commission of,  
80 or an attempt to commit, or flight after committing or attempting  
81 to commit, any robbery, rape, arson, burglary, kidnapping,  
82 aircraft piracy, sexual battery, unnatural intercourse with any  
83 child under the age of twelve (12), or nonconsensual unnatural  
84 intercourse with mankind, or felonious abuse and/or battery of a  
85 child in violation of subsection (2) of Section 97-5-39,  
86 Mississippi Code of 1972, or the unlawful use or detonation of a  
87 bomb or explosive device.

88                 (e) The capital offense was committed for the purpose  
89 of avoiding or preventing a lawful arrest or effecting an escape  
90 from custody.

91                 (f) The capital offense was committed for pecuniary  
92 gain.

93 (g) The capital offense was committed to disrupt or  
94 hinder the lawful exercise of any governmental function or the  
95 enforcement of laws.

96 (h) The capital offense was especially heinous,  
97 atrocious or cruel.

98 (6) Mitigating circumstances shall be the following:

99 (a) The defendant has no significant history of prior  
100 criminal activity.

101 (b) The offense was committed while the defendant was  
102 under the influence of extreme mental or emotional disturbance.

103 (c) The victim was a participant in the defendant's  
104 conduct or consented to the act.

105 (d) The defendant was an accomplice in the capital  
106 offense committed by another person and his participation was  
107 relatively minor.

108 (e) The defendant acted under extreme duress or under  
109 the substantial domination of another person.

110 (f) The capacity of the defendant to appreciate the  
111 criminality of his conduct or to conform his conduct to the  
112 requirements of law was substantially impaired.

113 (g) The age of the defendant at the time of the crime.

114 (h) The defendant is mentally retarded, which is  
115 defined as substantial limitations in present functioning  
116 characterized by significantly subaverage intellectual functioning  
117 existing concurrently with related limitations in two (2) or more  
118 of the following applicable adaptive skill areas: communication,  
119 self-care, home living, social skills, community use,  
120 self-direction, health and safety, functional academics, leisure  
121 and work.

122 (7) In order to return and impose a sentence of death the  
123 jury must make a written finding of one or more of the following:

124 (a) The defendant actually killed;

125 (b) The defendant attempted to kill;

126 (c) The defendant intended that a killing take place;

127 (d) The defendant contemplated that lethal force would  
128 be employed.

129 **SECTION 2.** This act shall take effect and be in force from  
130 and after July 1, 2004.